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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 09 CR 14013
)	
ORVID MILLER,)	
)	The Honorable
Defendant-Appellant.)	Evelyn B. Clay,
)	Judge, presiding.
)	

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Pierce and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing Miller's postconviction petition as frivolous and patently without merit.

¶ 2 **BACKGROUND**

¶ 3 On July 10, 2009, Orvid Miller was arrested for predatory criminal sexual assault against his 12-year-old niece. Almost three years later, on April 10, 2012, he pleaded guilty to that crime after a Rule 402 conference. Miller was admonished that the sentencing range was

between six and sixty years of imprisonment, to be served at eighty-five percent. He accepted the court's offer, pleaded guilty, and was sentenced to ten years of imprisonment.

¶ 4 A few weeks later, Miller moved to withdraw the guilty plea and vacate his sentence. In that motion, Miller alleged that he had told his attorney to assert his right to a speedy trial, but she refused to do so and deliberately prolonged the proceedings. Before the court could rule on the motion, Miller voluntarily withdrew it because he now knew "what's best for [him]."

¶ 5 In 2013, Miller filed a timely petition for postconviction relief, alleging that his attorney had provided ineffective assistance of counsel by failing to move to dismiss the case based on his constitutional right to a speedy trial. He alleged that the attorney deliberately prolonged the proceedings by asking for continuances to help the State, and told him she could not win his case. Miller also alleged that one of the prosecutors had delayed the proceedings by withholding documents. The trial court dismissed the petition as frivolous and patently without merit. This Court granted Miller leave to file a late notice of appeal.

¶ 6 STANDARD OF REVIEW

¶ 7 We review the summary dismissal of a postconviction petition *de novo*. *People v. Walker*, 2015 IL App (1st) 130530, ¶ 11.

¶ 8 ANALYSIS

¶ 9 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.*) provides a three-step process for a defendant to collateral attack his or her conviction based on a substantial denial of his or her constitutional rights during the proceedings that led to that conviction. *Id.* At the first stage of the proceeding, we focus on whether the petition sets forth the "gist" of a constitutional claim; if it does not, the petition may be dismissed as frivolous or patently without merit if the

petition has no "arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009).

¶ 10 Miller's guilty plea prevents him from claiming that counsel's assistance was ineffective for failing to raise the speedy trial issue before he pleaded guilty. A voluntary guilty plea waives all non-jurisdictional errors, including constitutional ones. *People v. Townsell*, 209 Ill. 2d 543, 545 (2004). Because a guilty plea "represents a break in the chain of events that has preceded it," a defendant who has pled guilty may not claim that his or her constitutional rights were violated before the entry of the plea. *People v. Wendt*, 283 Ill. App. 3d 947, 956-57 (1996) (citing *Tollett v. Henderson*, 411 U.S. 258, 267 (1973)). This even bars constitutional claims in the postconviction context, which is reserved for constitutional claims and where claims of ineffective assistance are common. See *People v. Ivy*, 313 Ill. App. 3d 1011, 1017 (2000) (defendant barred from arguing in postconviction petition that trial counsel was ineffective for failing to file motion to suppress before defendant pleaded guilty).

¶ 11 A defendant who has pleaded guilty may only challenge the plea proceedings themselves—whether the plea was entered voluntarily and based on competent advice from counsel. *Tollett*, 411 U.S. at 266. A defendant may argue that his guilty plea was the result of ineffective assistance. *People v. Miller*, 346 Ill. App. 3d 972, 980-81 (2004). For example, a plea might be unknowing and involuntary because counsel misinformed the defendant about his or her eligibility for sentencing credit. *People v. Stewart*, 381 Ill. App. 3d 200, 203-04 (2008).

¶ 12 In his postconviction petition, Miller argued that his counsel should have asserted his speedy trial rights. But he did not draw any connection between her alleged ineffective assistance and the voluntariness of his guilty plea. Had he done so, this case would fall within *Tollett's* orbit; since he did not, his claim is barred by his guilty plea.

¶ 13 Miller argues that the two claims (ineffective assistance and voluntariness of the plea) are "necessarily, if implicitly" connected. Not so. It is entirely possible that Miller pled guilty knowingly and voluntarily and has no regrets about his choice—while still desiring to pursue a constitutional speedy trial claim that could result in outright release from custody. (Indeed, more than possible since the sentencing range for Miller's conviction was six to sixty years, but Miller's plea deal led to a sentence of ten years, at the low end of the range.) A trial counsel's inaction or incompetence could lead defendants to throw up their hands in frustration and plead guilty despite a desire to go to trial, but there is nothing in the record to indicate that is what happened here.

¶ 14 Some cases have expanded *Tollett* so that *any* ineffective assistance claim is "implicitly" arguing involuntariness. See, e.g., *People v. Bivens*, 43 Ill. App. 3d 79, 82 (1976) (finding that defendant's plea was "arguably" involuntary because attorney did not advise him of speedy trial rights). But such a broad holding opens a wide gap in *Tollett*'s principle that a guilty plea waives constitutional claims. Accordingly, in a first-stage postconviction petition, a defendant who has pled guilty and wishes to raise an ineffective assistance claim must allege at least some connection between the ineffective assistance and the voluntariness of the guilty plea. Because Miller did not allege any connection between the ineffective assistance and the voluntariness of the guilty plea, the trial court did not err in dismissing the petition.

¶ 15 Affirmed.